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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>DWIGHT ROLLAND SHELTON et al.,<br><br>Defendants and Appellants. | B222428 c/w B225438<br><br>(Los Angeles County Super. Ct. No. BA344533) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Perry, Judge. Affirmed as modified, remanded with directions.

Marilee Marshall & Associates, Inc. and Marilee Marshall, under appointment by the Court of Appeal, for Defendant and Appellant Dwight Rolland Shelton.

Robert Simon, under appointment by the Court of Appeal, for Defendant and Appellant Joseph Allen Little.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan S. Pithey and Roberta L. Davis, Deputy Attorneys General, for Plaintiff and Respondent.

Appellants Dwight Rolland Shelton and Joseph Allen Little challenge their convictions for making false financial statements, grand theft, forgery, and other crimes related to six real estate transactions. They maintain that the trial court adopted the role of prosecutor during their trial, that there was evidentiary error, and that they were improperly subjected to multiple punishments in contravention of Penal Code section 654; in addition, Little contends there was insufficient evidence to support his convictions, and Shelton contends that the abstract of judgment regarding his convictions contains errors.[1] With the exception of Shelton's challenge to the abstract of judgment, we reject these contentions. We therefore order that Shelton's abstract of judgment be modified, and otherwise affirm.

## RELEVANT PROCEDURAL BACKGROUND

On October 29, 2009, a first amended information was filed charging appellants with making false financial statements (§ 532a, subd. (1); counts 2-3, 5, 39, 55, 62, 69, 72), grand theft of personal property (§ 487, subd. (a); counts 6, 29-31, 68), forgery (§ 470, subd. (a); counts 7-9, 14-19, 33-35, 38, 52, 57, 61, 63, 66-67, 70, 71, 73), offering a false or forged instrument for filing (§ 115, subd. (a); counts 10-11, 20-21, 42-43, 49, 50, 53, 64), identity theft (§ 530.5, subd. (a); counts 13, 27, 54), attempted grand theft of personal property (§§ 487, subd. (a), 664; counts 56, 60), and conspiracy to commit a crime (§ 182, subd. (a)(1); count 74). In connection with specified counts, the information alleged that the value of the pertinent property exceeded $150,000 (former § 12022.6, subd. (a)(2); counts 6, 29, 30, 60, 66); that the loss exceeded $100,000 (§ 115, subd. (c)); counts 10-11, 20-21, 42-43, 49, 53, 56, 64); and that the felonies involved fraud or embezzlement

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[1] All further statutory citations are to the Penal Code, unless otherwise indicated.

as a material element, as well as a pattern of felonious conduct related to the taking of more than $500,000 (§ 186.11, subd. (a)(2); counts 2-21, 50, 52-57, 60-63). The information also alleged that the crimes were committed while Little had been released on bail (§ 12022.1).

In addition, the information charged Shelton individually with robbery (§ 211; count 48), offering a false or forged instrument for filing (§ 115, subd. (a); counts 49-50), making a false financial statement (§ 532a, subd. (1); counts 65, 69. 72), forgery (§ 470, subd. (a); counts 66-67, 70-71, 73), and grand theft of personal property (§ 487, subd. (a); count 68). With respect to one count of forgery (count 66), the information alleged that the value of the pertinent property exceeded $150,000 (former § 12022.6, subd. (a)(2)) and that the loss exceeded $100,000 (§ 115, subd. (c)).

Appellants pleaded not guilty and denied the special allegations, with the exception of the "on bail" allegation against Little (§ 12022.1), which Little admitted. After the presentation of evidence at appellants' jury trial, the trial court dismissed one count of grand theft of personal property charged against both defendants (count 30).

The jury found appellants guilty on all counts, with the exception of count 48 (robbery) against Shelton, regarding which the jury was unable to reach a verdict.[2] The jury rendered special verdicts that appellants had committed two or more related felony offenses, a material element of which was fraud or embezzlement, and which involved the taking of more than $500,000 (§ 186.11, subd. (a)(2)); in addition, the jury found true the allegation under two counts of

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[2] The trial court declared a mistrial regarding count 48 and later dismissed it.

grand theft of personal property (counts 6 and 29) that the value of the property exceeded $150,000 (former § 12022.6, subd. (a)(2)). The trial court sentenced Shelton to a total term of imprisonment of 29 years and 4 months, and Little to a total term of 27 years and 4 months. In addition, appellants were ordered to pay restitution to several victims.

## FACTS

A. *Prosecution Evidence*

1. *Overview*

The prosecution submitted evidence that appellants, while operating a real estate business called "Freedom Forever Enterprises" (Freedom Forever), arranged several fraudulent real estate transactions. They jointly committed forgery and other crimes during five transactions involving properties on Tennessee Avenue in West Los Angeles, Acacia Avenue in Glendale, Breada Avenue in Murietta, Whitesprings Drive in Whittier, and North 140th Way in Scottsdale, Arizona (Arizona property); in addition, Shelton committed forgery and other crimes during a sixth transaction involving a property on Formosa Avenue in West Hollywood. Appellants used fictitious or stolen identities to facilitate the transactions, and then stole, or attempted to steal, the sale proceeds. In connection with the Tennessee Avenue and Formosa Avenue properties, the purported buyer was a fictitious person named "Don Marsh"; in connection with the remaining properties, the purported buyer was Valerie Najera, whose identity appellants had misappropriated. Appellants were assisted by Roderick Dunn, Harold McCrimmon, and employees of Sunset Capital Mortgage (Sunset Capital) and EZ Loans, some of whom admitted engaging in wrongful conduct.

2. *Background*

a. *Freedom Forever*

In early 2006, Merav Agig became Shelton's girlfriend for several months. Shelton asked her to become Chief Financial Officer (CFO) of Freedom Forever, a company he had operated for 10 years. Although Agig was unclear what a CFO did, she agreed. She received no pay and had nothing to do with Freedom Forever's daily operations, but sometimes signed documents. At some point, she and Shelton opened a Bank of America account for Freedom Forever. According to Agig, Shelton sometimes relied on her credit rating to arrange transactions for his benefit.[3]

In August 2006, Michele Smith met with appellants at a restaurant, where Little explained that he wanted to hire an administrative assistant for his real estate business, which he identified as Freedom Forever. Little introduced Shelton as his business partner. A few weeks later, Smith accepted an offer of employment from Little. After Smith began her employment, Little told her that certain people would be contacting her regarding real estate transactions. The people included Tonya Crawford, who worked for Sunset Capital, and Andrea Taylor, who worked at EZ Loans. On the basis of e-mails from Vanessa Menjivar, who also worked at Sunset Capital, Smith compiled a list of real estate transactions that she monitored for Little. The list included transactions involving Valerie Najera. Smith also compiled a contact list based primarily on information from Little and Harold McCrimmon, who sent Smith e-mails. Although Smith rarely talked to Shelton,

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[3] According to Agig, one of these transactions involved the purchase of real property, but Shelton reneged on his promise to share the profits with her, and the property was eventually lost through foreclosure proceedings.

she communicated regularly with Little in order to update him regarding the transactions on her list.

c. *Don Marsh*

At some point, Shelton persuaded Agig to join him in purchasing a house on Libbet Avenue in Encino. They agreed to buy the house, fix it up, "flip it," and share the profits from the sale. Although each contributed to the down payment on the house, the loan was obtained on the basis of Agig's credit. According to Agig, Shelton reneged on his promises to her, and failed to fix up the house. Instead, he transferred the house to another owner, but left her responsible for the loan. Because she did not make the loan payments, the lending bank initiated foreclosure proceedings.

The prosecution submitted a bankruptcy petition filed on behalf of Don Marsh, which listed the Libbet Avenue property as his address. Agig knew of no such person living on the Libbet Avenue property. In addition, the prosecution submitted evidence that gas bills and credit card charges in the name of Don Marsh were paid through Freedom Forever's bank accounts.

d. *Valerie Najera*

In 2006, Lisa Blue provided credit repair services through an office operated by Ayinde Mitchell.[4] While making a presentation regarding these services, Blue encountered Little. Blue had become acquainted with Little years earlier, but had not seen him for 10 years. Two or three weeks later, she dined with Little and

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[4] During the underlying events, Blue was married and used the name, "Blue-Letto."

Shelton at a restaurant. Following this contact, Shelton asked Blue whether she knew of someone with good credit interested in helping him buy a property. Shelton said the property was to be renovated for use by disabled persons and resold, and that he sought a "co-buyer or a co-owner" who would be paid from the venture's profits.

In July or August 2008, Valerie Najera met with Mitchell, seeking advice regarding starting a business. Mitchell suggested that Najera work as a "substitute buyer," and brought Najera to Blue's attention. Najera revisited Mitchell's office, talked to Blue, and signed a substitute buyer agreement. Under the agreement, Najera was to receive $8,000 in exchange for the use of her name in connection with the purchase of a house on Laurel Canyon; Najera was to act as the owner of the house for four months while it was renovated. According to Najera, she never agreed to act as a substitute buyer regarding any other property, and she never authorized anyone to place her signature on documents related to the purchase of other properties.

After Blue identified her own employer as Shelton, Najera talked to him by phone, but never met him. Shelton arranged a meeting between Najera and Roderick Dunn, a notary, regarding the purchase of the Laurel Canyon property. When Najera signed Dunn's notary book, she noticed that the page upon which she placed her signature contained no information.

Najera testified that after this incident, she talked to Blue, who told her that someone would be contacting her. She then received a call from Harold McCrimmon, asking for a copy of her bank statement so that he could arrange for the payment of her fee. After Najera provided the statement, she and Blue drove to a car dealership, where Blue obtained $4,000 for Najera.

Blue testified that after the incident involving Dunn, Najera expressed concerns regarding the Laurel Canyon property transaction. Blue tried

unsuccessfully to contact Shelton, and then phoned Little. According to Blue, she told Little that "things weren't being done as [Najera] expected . . . based on the time frames and the information given [to] her." Little replied that he would look into the situation. Shortly thereafter, following Najera's receipt of some mortgage statements regarding properties of which she had no knowledge, Blue again contacted Little and described the statements. When Little said that he would investigate them, Blue told him, "'Whatever is going on . . . [t]his needs to stop.'" Little did not respond to Blue's inquiries. Instead, McCrimmon phoned Blue and told her to assure Najera that "everything [was] going to be okay." Shortly thereafter, Blue and Najera drove to the car dealership where McCrimmon gave Blue $4,000 for Najera.

In December 2006, McCrimmon told Blue that Najera could pick up the balance of her $8,000 fee at the Pacific Escrow Company. When Blue and Najera appeared at the escrow company, someone referred to a fraud in connection with the Laurel Canyon property transaction, and Blue and Najera fled from the office. Najera left messages for Shelton and McCrimmon that she refused to carry on with the transaction. She later learned that her signature had been forged on documents related to several real estate transactions.

e. *Roderick Dunn*

Beginning in 2006, Dunn provided notary services at Shelton's request on several occasions. Shelton arranged for Dunn to meet with Najera and notarized her signature on some documents. Later, at Shelton's request, Dunn notarized signatures on documents related to other transactions, even though the purported signers were not present. According to Dunn, in December 2006, Shelton seized his notary book and never returned it. Later, Dunn pleaded guilty to a charge of notary fraud.

f. *Harold McCrimmon*

McCrimmon testified that he owned a phone store called "Digital Solutions" in San Diego. After he met appellants in May 2006, they asked him to help process real estate files connected with Little's investment activities. Later, at Shelton's request, McCrimmon performed tasks related to the underlying real estate transactions. According to McCrimmon, at Shelton's direction, funds from the transactions were sometimes disbursed to McCrimmon or his business and then relayed to other parties. At some point, Shelton told McCrimmon that he split the funds from his real estate transactions with Little. McCrimmon pleaded guilty to a felony in connection with the underlying transactions.

g. *Sunset Capital*

During the pertinent period, Tonya Crawford was a loan processor working at Sunset Capital, in which her brother held an ownership interest. Crawford's assistant was Vanessa Menjivar. In 2006, in the course of business, Crawford became acquainted with Little, who later introduced her to Shelton.

In August 2006, appellants met with Crawford and Menjivar at Sunset Capital. Appellants said that Shelton had several clients who wanted to "flip" properties, and that they intended to bring approximately five loans per month to Sunset Capital. Crawford and Menjivar provided appellants packets of blank loan applications and related documents, and subsequently processed the documents that Shelton submitted in connection with the six properties at issue. According to Crawford, Shelton purported to act as the "consultant" for the buyer and the seller in connection with five of these transactions (Tennessee Avenue, Acacia Avenue, Breada Avenue, Whitesprings Drive, and Formosa Avenue); in addition, Menjivar testified that Shelton said he represented Najera.

Crawford and Menjivar placed false information on the loan applications, and obtained falsified documents to facilitate the loans. They arranged for fabricated documents concerning Najera's taxes and employment. In addition, they acquired false verifications of rent for Najera and Don Marsh from Maryann Oliver, who worked for a real estate management company.[5] Later, Crawford and Menjivar each pleaded guilty to a felony in connection with the underlying transactions.

h. *EZ Loans*

In 2006, Sharon Thornton owned and operated EZ Loans. Although Shelton did not have an office at EZ Loans, he visited it once or twice a week, sat at a desk, and sometimes used its office computers. According to notary Dunn, Shelton described EZ Loans as "his office." In addition, Little often visited EZ Loans and had a close relationship with Thornton, who was training Little's wife regarding the real estate business.

Thornton pleaded guilty to three felonies in connection with the underlying real estate transactions. EZ Loans assisted Sunset Capital in processing loans related to at least seven transactions involving Najera. When Taylor, a loan processor working at EZ Loans, asked Thornton why Najera was engaged in so many transactions, Thornton said that Najera "had come into some money" and was "flipping a lot of properties to make . . . a quick profit." According to Taylor, on several occasions, Little discussed the progress of the Najera transactions with her, and sometimes brought documents related to the transactions to EZ Loans; in

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[5] According to Oliver, she prepared the false verification regarding Najera when a friend requested it; later, Crawford paid Oliver $100 for the false verification regarding Marsh. Oliver testified under a grant of immunity.

addition, Taylor often talked to Woods, Little's assistant, regarding the transactions.[6]

3. *Offenses*

The prosecution presented evidence that appellants conspired to commit grand theft exceeding $400, identity theft, the filing of false statements, forgery, and the offering of false or forged documents for filing (count 74). This evidence was related to their conduct in connection with several real estate transactions.

a. *Tennessee Avenue Property (Counts 2, 3, 5, 6-11)*

In 2006, Eugene Coldewe was in his late 80's and lived in a house on Tennessee Avenue that he had owned for over 20 years. Coldewe never offered his house for sale or authorized its sale.

Prior to August 1, 2006, Little phoned Anthony Sykes and asked him to appraise Coldewe's house. Sykes declined to do so unless he was paid in advance. Later, when appellants met with Sykes, Shelton stated that the appraisal was for him, rather than Little, and agreed to pay Sykes $500 in advance. According to Sykes, he never met Coldewe, and Shelton never explained his authority to request the appraisal. In appraising Coldewe's house, Sykes entered the house through a rear door and took interior photographs. Sykes then provided his appraisal to Sunset Capital.

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**6** After Taylor ended her employment with EZ Loans, a detective investigating the underlying crimes contacted her. When Taylor asked Thornton what was going on, Thornton urged her not to talk to the detective. Later, Thornton arranged a meeting with Taylor that Shelton also attended. At the meeting, Shelton also asked Taylor not to talk to the detective.

Shelton provided loan documents regarding the property to Sunset Capital, which processed them. The documents named Don Marsh as the purchaser, and identified him as an officer of Freedom Forever; they also attributed to him a driver's license number and bank account number that belonged to other people. On September 15, 2006, Amerisource Escrow Inc. wired $685,000 into Freedom Forever's Bank of America account pursuant to escrow instructions bearing Coldewe's forged signature. Coldewe's signatures on other documents were also forged.

In September 2006, upon visiting Coldewe, Chrystal Arnold found documents mentioning an escrow involving Coldewe's house and a grant deed identifying the new owner as Don Marsh. Arnold sought legal advice on Coldewe's behalf, and notified Mara Johnson, Coldewe's guardian and care giver.[7]

b. *Acacia Avenue (Counts 13-21, 53)*

In 2006, Clemente Camacho owned the Acacia Avenue property, and never authorized its sale. In September 2006, Shelton sought an appraisal of the property from Ronald Robbins, who received additional information regarding the appraisal from Sunset Mortgage. Shelton told Robbins that he probably could not get access to the property due to a pending divorce. In compiling the appraisal, Robbins used interior photographs of a different house. Shelton paid $500 to Robbins, who submitted the appraisal to Sunset Mortgage.

Shelton provided a loan application regarding the property that included Najera's forged signature. The application falsely represented that Najera worked

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[7] Johnson ultimately incurred $75,000 in attorney fees to recover Coldewe's property. In addition, pursuant to a title insurance policy, Security Union Title Insurance paid $715,000 to BNC Mortgage due to the fraudulent trust deed.

for the Joshua Management Group, an accounting firm that occasionally provided financial services to appellants. During the transaction, a grant deed for the property was prepared bearing Camacho's signature. Dunn testified that he notarized the deed after someone claiming to be Camacho signed the deed. At trial, Camacho denied executing any sale documents purporting to bear his signature.

When escrow closed, the escrow company was instructed to forward the sales proceeds to Sunset Capital. Pursuant to these instructions, the escrow company sent a $554,589.74 check for Camacho to Sunset Capital. On November 29, 2006, Shelton picked up the check at Sunset Capital.

In late 2006, Camacho received a letter from his mortgage holder acknowledging a request for a change of address. As Camacho had made no such request, he phoned the mortgage holder and discovered that his mortgage balance was listed as "zero" due to a sale of his house. At Camacho's request, payment was stopped on the $554,589.74 check.

c. *Breada Avenue (Counts 27, 29, 31, 33-35, 38-39, 42-43, 49)*

In September 2006, Jorge and Patricia Hernandez decided to sell their property on Breada Avenue. Jorge told several loan officers and brokers he knew, including McCrimmon. McCrimmon replied that he knew of someone interested in the property. Shortly afterward, Jorge received a purchase agreement by mail identifying Najera as the potential buyer. Jorge never met Najera, and instead communicated through McCrimmon. The Hernandezes accepted Najera's purported offer and opened escrow.

Najera's signatures on the documents related to the transaction were forged, and false information for her was used in connection with the loan application. At Shelton's request, Dunn notarized several documents that displayed Patricia

Hernandez's purported signature, even though she was not present. After escrow closed in October 2006, the escrow company was instructed to pay out $45,000 of the sale proceeds to McCrimmon's business, Digital Solutions, and to redirect a $2,719.86 refund for Najera to Sunset Capital. According to McCrimmon, he received only $2,500 of the $45,000 as a referral fee; at Shelton's direction, he gave $37,500 to Shelton and $5,000 to Blue.[8]

d. *Arizona Property (Counts 54-57)*

In December 2006, Joseph Carr and his wife listed their property in Scottsdale, Arizona for sale through real estate agent Eric Saul. After Shelton contacted Saul's office, the property was purportedly sold to Najera for $1.25 million. A document bearing Carr's forged signature assigned $275,000 of the proceeds to McCrimmon's business, Digital Solutions. Escrow regarding the transaction never closed because Saul's office was unable to contact Najera.

e. *Whitesprings Drive (Counts 50, 60-64)*

In or after June 2006, Little invited Aaron Joshua, who owned the Joshua Management Group, to hold some funds from a real estate transaction in his business's trust account. According to Joshua, although he expressed interest and provided appellants with account information, the transaction he discussed with Little never transpired.

Later, documents containing Najera's forged signature were used to buy the Whitesprings Drive property, which was owned by Maryann Mariano. Dunn notarized Mariano's purported signature on the grant deed. The payoff demand

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[8] Blue denied receiving any funds from Shelton or McCrimmon other than the money McCrimmon gave her for Najera.

requested that the check for the sales proceeds be sent to Joshua Management Group's bank account. Joshua testified that he never agreed to participate in the transaction and did not authorize the transfer.

When the escrow company responsible for the transaction was instructed to send the funds to the Joshua Management Group, it asked that Mariano come to its offices and personally authorize the transfer. Because Mariano did not do so, the escrow company declined to release the funds. According to the escrow officer who managed the transaction, a man also phoned and asked that the funds be wired to the Joshua Management Group account. The officer rejected the request, and the funds were never disbursed.

f. *Formosa Avenue (Counts 67-73)*

In 2006, Otis L. Banks decided to sell his house on Formosa Avenue. Banks was a friend of Thornton, who owned EZ Loans, and was listed as a vice president of EZ Loans. Banks advertised the sale by fliers, one of which was displayed at EZ Loans. On one of the occasions appellants visited EZ Loans, Shelton noticed the flier and asked Thornton questions regarding it. Later, Banks sold the house to Don Marsh through an agent. According to Banks, he never met Marsh.

Shelton submitted Don Marsh's loan application to Sunset Capital. In processing the application, Crawford purported to verify the false information on the application regarding Marsh. During the transaction, Little and a man who identified himself as Marsh appeared before Jeffrey Johnson, who notarized Marsh's signature on the trust deed. Little paid for the notary services. Upon the close of escrow, $60,000 from the sales proceeds was wired to Freedom Forever.

In June or July 2006, Kimberley Wesley and her children moved into the residence on the property. Wesley was Little's girlfriend, and had four children with him, including her oldest son, Jonathan Little. Wesley later told investigating

officers that at Shelton's direction, she paid monthly rent to someone she knew as Ann for approximately six months, after which she stopped paying rent.[9] Later, foreclosure proceedings began regarding the property. Wesley's family continued to live on the property without paying rent until they were evicted in October 2009.

4. *Events Surrounding Appellants' Arrests*

In February and March 2007, Little deposited checks totaling $60,000 in the checking account of his girlfriend, Courtney Thomas. After each deposit, at Little's request, Thomas withdrew the funds at the maximum daily rate permitted by her bank and gave the funds to Little.

On November 16, 2007, investigating officers arrested Little, who had been driving a SUV. Inside the SUV, the officers found checks and deposit slips for Thomas's bank account, business cards for the Joshua Group, and a handwritten note referring to the Laurel Canyon property for which Najera had acted as "substitute buyer." In addition, they found identification cards for "Dave Quinn" bearing Little's photograph.

On November 8, 2008, during a police interview, Shelton described himself as an unlicensed real estate "networker" who received 10 to 20 percent of the proceeds from transactions. When asked why people would pay such a fee for services that licensed brokers perform for a 3 to 6 percent commission, Shelton replied that the people he used were "very, very fast," and added, "I don't understand the motivation behind the sellers." Upon viewing a chart depicting the persons involved in the underlying transactions, Shelton described McCrimmon as a friend who handled financing, Blue as a person who had introduced him to potential buyers, Najera as one such buyer, Crawford as a "very fast" loan

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**9** At trial, Wesley denied knowing Shelton.

processor, and Joshua as a former business partner who performed accounting services for him. In connection with the Acacia Avenue property transaction, Shelton said that he had brought the buyer to the seller, but maintained that Camacho's picture on the chart did not resemble the person he knew as Camacho. Furthermore, in connection with Najera's bank statement, which had been altered to reflect a higher balance, Shelton remarked that it was a common practice for borrowers to inflate their financial resources. He denied any knowledge whether Najera had been paid for the use of her identity in connection with the real estate transactions.

B. *Shelton's Defense Evidence*

Shelton testified that since 2000, he had participated in many real estate transactions. Shelton asserted that he alone opened Freedom Forever's Bank of America account in 2005. According to Shelton, Agig was the sole purchaser of the Libbet Avenue property; he acted only as a "facilitator" in the transaction. He also denied using Agig's credit to obtain items for his own benefit.

With respect to the underlying transactions, Shelton denied that he engaged in fraudulent conduct or knowingly provided false information to anyone. According to Shelton, Don Marsh was a real person he had met several times. Shelton denied that he identified Marsh as an officer of Freedom Forever, or that he submitted the bankruptcy petition for Marsh listing the Libbet Avenue property as Marsh's address. His sole conduct regarding Blue and Najera was to refer Blue to McCrimmon when she said that she had located substitute buyers. Shelton further testified that neither he nor Little received blank loan documents when they visited Sunset Capital in August 2006. He denied that he sent e-mails to Crawford, Menjivar, and Woods, that he hired Dunn to provide notary services regarding the

underlying transactions, and that he possessed false identification cards when he was arrested.[10]

Regarding the Tennessee Avenue transaction, Shelton testified he represented only Marsh, and never met Coldewe. He submitted no documents related to the transaction to Sunset Capital, and did not hire Sykes to appraise the property. According to Shelton, Marsh asked him to assign the transaction proceeds to Freedom Forever for further distribution. After Freedom Forever received the funds, pursuant to Shelton's agreement with Marsh, Shelton withheld his fee and issued the balance to Marsh and Coldewe.

Regarding the Acacia Avenue transaction, Shelton testified that his sole act was to refer a phone call from someone purporting to represent Najera to McCrimmon. He denied any other involvement or conduct in connection with the transaction. Similarly, regarding the Arizona transaction, Shelton testified that his only act was to phone Saul and inquire regarding the property. Regarding the other transactions, Shelton denied that he obtained funds from the Breada Avenue transaction, that he asked the escrow company responsible for the Whitesprings Drive transaction to send funds to the Joshua Management Group, and that he arranged for Wesley and her family to live on the Formosa Avenue property.

C. *Little's Defense Evidence*

On June 19, 2007, Glendale Police Department Detective Robert Zaun conducted a brief interview of Blue, who was not charged in the underlying case. Blue told Zaun that Shelton asked her to find people with good credit "to purchase properties and flip properties along with him and his company Freedom Forever," but did not mention Little. Later, after an arrest warrant was issued for Blue, she

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**10** Shelton also denied that he asked Taylor not to speak with the police.

was informed by phone that if she appeared for an interview, she would not be placed in custody and would be free to leave after the interview, regardless of what she said. On September 18, 2008, Zaun and the prosecutor interviewed Blue. Blue mentioned that she met Little before Shelton asked her to find co-buyers, but otherwise described no contacts with Little. An audiorecording of the interview was played for the jury.

On December 6, 2007, Zaun and the prosecutor interviewed Taylor, who also was never charged in the case. During the interview, Zaun told Taylor that although she was a potential suspect, her statements would not be used against her. Taylor stated that Shelton and Thornton instructed her to work on the loans involving Najera, but never mentioned that Little monitored the loans.[11]

D. *Rebuttal*[12]

Detective Zaun testified that he obtained Shelton's photograph from the California Department of Motor Vehicles. The photograph was admitted, together with copies of some identification cards and driver's licenses that Shelton denied possessing when he was arrested.

## DISCUSSION

Appellants contend that the trial court improperly acted as prosecutor during their trial, that there was evidentiary error, and that they were subjected to multiple

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[11] Zaun further testified that because Crawford, Menjivar, and McCrimmon agreed to testify at trial, some of the charges against them were dismissed; that he never found any records of phone calls between Smith and Little or e-mails from Smith to Little; and that neither Joshua nor Sykes was charged in the case.

[12] The trial court permitted the prosecutor to present rebuttal evidence during his cross-examination of Detective Zaun when Zaun testified as Little's witness.

punishments in contravention of section 654. In addition, Little contends there is insufficient evidence to support his convictions, and Shelton contends the abstract of judgment regarding his convictions incorrectly reflects his sentence. For the reasons explained below, we reject these contentions, with the exception of Shelton's challenge to the abstract of judgment.

A. *Substantial Evidence*

We begin with Little's contention that his convictions fail for want of substantial evidence. For the reasons explained below, we disagree.

1. *Standard of Review*

Our inquiry into Little's contentions follows established principles. "In determining whether the evidence is sufficient to support a conviction . . . , 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citations.] Under this standard, 'an appellate court in a criminal case . . . does not ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.' [Citation.] Rather, the reviewing court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Vy* (2004) 122 Cal.App.4th 1209, 1224.)

2. *Conspiracy*

Little contends there is insufficient evidence that he conspired with Shelton to commit crimes (§ 182, subd. (a)(1)). Generally, "[a] conviction of conspiracy requires proof that the defendant and another person had the specific intent to agree or conspire to commit an offense, as well as the specific intent to commit the elements of that offense, together with proof of the commission of an overt act 'by one or more of the parties to such agreement' in furtherance of the conspiracy. [Citations.]" (*People v. Morante* (1999) 20 Cal.4th 403, 416.) Conspiracy does not require the actual commission of the crimes that are the object of the conspiracy. (*Id*. at pp. 416-417.) Moreover, it is not necessary that a party to a conspiracy be present and participate in the overt acts that further the conspiracy. (*Id*. at p. 417.)

Under these principles, to establish a conspiracy, "the prosecution need not show that the parties met and expressly agreed to commit a crime. [Citations.] The evidence is sufficient if it supports an inference that the parties positively or tacitly came to a mutual understanding to commit a crime. [Citation.] The existence of a conspiracy may be inferred from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy. [Citations.]" (*People v. Cooks* (1983) 141 Cal.App.3d 224, 311 (*Cooks*).) Furthermore, "[o]nce the conspiracy is established it is not necessary to prove that each conspirator personally participated in each of several overt acts since members of a conspiracy are bound by all acts of all members committed in furtherance of the conspiracy. [Citations.] The crime of conspiracy can be committed whether the conspirators fully comprehended its scope, whether they acted together or in separate groups, or whether they used the same or different means known or unknown to them. [Citations.]" (*Id*. at p. 312.)

Here, appellants were charged with conspiracy to commit grand theft exceeding $400, identity theft, making false financial statements, forgery, and offering false or forged documents for filing. Little does not dispute that there is sufficient evidence that Shelton engaged in overt acts in furtherance of these crimes. He maintains only that there is no evidence that he had the specific intent to conspire to commit the offenses or the specific intent to commit the elements of the offenses.[13] We disagree.

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**13** The elements of grand theft exceeding $400 (§ 487, subd. (a)) are "the taking of personal property [valued at more than $400] from the owner[] into the possession of the criminal without the consent of the owner or under a claim of right, [and] the asportation of the subject matter [with] the specific intent to deprive the owner of his property wholly and permanently." (*People v. Walther* (1968) 263 Cal.App.2d 310, 316.)

To commit identity theft (§ 530.5, subd. (a)), "a defendant must both (1) obtain personal identifying information, and (2) use that information for an unlawful purpose. [Citation.]" (*People v. Mitchell* (2008) 164 Cal.App.4th 442, 455.)

A defendant commits the offense of making a false financial statement (§ 532a, subd. (1)) by "knowingly mak[ing] or caus[ing] to be made . . ., any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself or herself, or any other person, firm or corporation, in whom he or she is interested, or for whom he or she is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the execution of a contract of guaranty or suretyship, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange, or promissory note, for the benefit of either himself or herself or of that person, firm or corporation . . . ."

The offense of forgery (§ 470, subd. (a)) has three elements, namely, "a writing or other subject of forgery, the false making of the writing, and [an] intent to defraud." (*People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 741.)

A defendant offering a false or forged instrument for filing (§ 115, subd. (a)) by "knowingly procur[ing] or offer[ing] any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States . . . ."

In view of Little's "conduct, relationship, interests, and activities" with Shelton, there is ample evidence that Little "positively or tacitly came to a mutual understanding" with Shelton to commit the target crimes, and that he acted with a specific intent to commit the elements of the target crimes. (*Cooks, supra*, 141 Cal.App.3d at p. 311.) Michele Smith testified that Little identified Freedom Forever as his business and Shelton as his business partner. Although Shelton played the leading role in the fraudulent transactions, the evidence at trial showed that Little knew of the transactions and assisted them. According to Smith and Taylor, Little paid close attention to the transactions involving Najera, and he brought documents related to them to EZ Loans. Little also knew of, and assisted in, the two transactions involving Don Marsh (regarding the Formosa Avenue and Tennessee Avenue properties), as Little appeared with a man who claimed to be Marsh during one transaction, and contacted the appraiser on Shelton's behalf during the other transaction.[14] Furthermore, Little derived benefits from the transactions: funds from at least two of the transactions were directed to Freedom Forever, and McCrimmon testified that Shelton said he shared the funds from his transactions with Little.

There was also considerable evidence that Little knew that the transactions were fraudulent when he assisted them. Regarding the transactions involving Najera, Blue testified that when she told Little that Najera's name appeared on mortgage documents outside the scope of Najera's "substitute buyer" agreement, Little replied that he would look into the matter. However, Little did nothing; instead, McCrimmon paid Najera a portion of her fee as a substitute buyer. This

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**14** Although Little was not charged with crimes in connection with the sale of the Formosa Avenue property, evidence of uncharged crimes may be relied upon to establish the elements of a conspiracy, as well as Little's knowledge and intent (see pt. C., *post*). (*Cooks, supra*, 141 Cal.App.3d at pp. 313-314.)

testimony, coupled with the evidence that Little monitored the transactions involving Najera, supports the reasonable inference that he knew the transactions were fraudulent and intended to facilitate them.

Regarding the transactions involving Don Marsh, there was sufficient evidence that Little knew that Marsh was a fictitious person. To begin, the prosecution submitted evidence that Marsh was created to facilitate fraud through Freedom Forever. Agig testified that no such person lived on the Libbet Avenue property she bought with Shelton, notwithstanding the bankruptcy petition listing the property as Don Marsh's address. In addition, there was evidence that at Shelton's request, Sunset Capital processed loan documents for the Tennessee Avenue property that falsely identified Marsh as an officer of Freedom Forever; that the driver's license number and bank account number attributed to Don Marsh on the loan documents belonged to other people; and that gas bills and credit card charges in Marsh's name were paid through Freedom Forever's bank. In view of this evidence that Marsh did not exist, the jury reasonably concluded that Little knowingly perpetrated the ruse that Marsh was a real person, as Little accompanied someone who purported to be Marsh to a notary in the course of the Formosa Avenue transaction. In sum, the record discloses substantial evidence to support Little's conviction for conspiracy.

3. *Other Convictions*

Little contends there is insufficient evidence to support his other convictions for grand theft, attempted grand theft, identity theft, making false financial statements, forgery, and offering false or forged documents for filing. As Little notes, the prosecution maintained at trial that he was responsible for the crimes as a direct perpetrator, aider and abettor, or conspirator. As a conspirator, Little was liable for all crimes committed in furtherance of the conspiracy, including crimes

of which he was not aware, provided they were the "'"probable and natural consequence[] of the object of the conspiracy."'" (*People v. Hardy* (1992) 2 Cal.4th 86, 188-189.) For the reasons explained above (see pt. A.2., *ante*), the conspiracy to which Little belonged encompassed (at minimum) the five fraudulent transactions related to the crimes charged against him. Accordingly, the record discloses substantial evidence supporting Little's convictions for these crimes on a theory of conspirator liability.

4. *Corroboration of Accomplices' Testimony*

Little further contends there was insufficient corroboration of the testimony from accomplices regarding the crimes charged against him, relying on the principle that a defendant may not be convicted "upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense . . . ." (§ 1111.) The jury was instructed regarding accomplice testimony, including that Crawford, Menjivar, McCrimmon, and Thornton were accomplices as a matter of law. Little argues that their testimony was inadequately corroborated. We disagree.

Generally, "'"[t]he requisite corroboration may be established entirely by circumstantial evidence. [Citations.] Such evidence 'may be slight and entitled to little consideration when standing alone. [Citations.]"'" [Citation.] '"Corroborating evidence 'must tend to implicate the defendant and therefore must relate to some act or fact which is an element of the crime but it is not necessary that the corroborative evidence be sufficient in itself to establish every element of the offense charged.' [Citation.]"' [Citation.] In this regard, 'the prosecution must produce independent evidence which, without aid or assistance from the testimony of the accomplice, tends to connect the defendant with the crime charged. [Citation.]' [Citation.] '"Corroborating evidence is sufficient if it

substantiates enough of the accomplice's testimony to establish his credibility [citation omitted].'" [Citation.]" (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1128.)

In large measure, the testimony just discussed regarding Little's role in the conspiracy came from nonaccomplices (see pt. A.2., *ante*). Smith's and Taylor's testimony showed that Little was Shelton's partner in Freedom Forever and that he paid close attention to the transactions involving Najera; furthermore, appraisers Sykes and Johnson testified regarding Little's participation in the transactions involving Don Marsh. Similarly, testimony from nonaccomplices established Little's knowledge of the transactions' fraudulent nature. Blue testified that Little knew the transactions involving Najera were proceeding without Najera's authorization; furthermore, Agig's and Johnson's testimony, together with documentary evidence, supported the inference that Little knew Don Marsh was a fictitious person. Taken as a whole, this evidence adequately corroborated the testimony from Crawford, Menjivar, McCrimmon, and Thornton regarding Little's status as a conspirator.

B. *Trial Court's Conduct*

Appellants contend the trial court took on the role of the prosecutor by questioning witnesses and summarizing their testimony, and by criticizing the prosecutor's presentation of evidence. For the reasons discussed below, we disagree.

1. *Governing Principles*

Under Penal Code section 1044 and Evidence Code sections 765, subdivision (a), and 775, the trial court is authorized to control the examination of witnesses to ensure the efficient "ascertainment of the truth," and to examine

witnesses on its own motion.[15] In view of these provisions, the trial court is required to limit testimony from a witness to facts within the witness's knowledge, but is permitted to elicit admissible and material testimony from witnesses through direct questioning. (*People v. Mayfield* (1997) 14 Cal.4th 668, 739, 755.) As our Supreme Court has explained, "'it is not merely the right but the duty of a trial judge to see that the evidence is fully developed before the trier of fact and to assure that ambiguities and conflicts in the evidence are resolved insofar as possible.'" (*Id.* at p. 739, quoting *People v. Carlucci* (1979) 23 Cal.3d 249, 255 (*Carlucci*).) Thus, "[a] trial court has both the discretion and the duty to ask questions of witnesses, provided this is done in an effort to elicit material facts or to clarify confusing or unclear testimony." (*People v. Cook* (2006) 39 Cal.4th 566, 597.) Similarly, the trial court may comment on a witness's testimony in order to clarify it, for purposes of assisting the jury's understanding. (*People v. Hawkins* (1995) 10 Cal.4th 920, 948 (*Hawkins*), abrogated on another ground in *People v. Blakeley* (2000) 23 Cal.4th 82, 89, and *People v. Lasko* (2000) 23 Cal.4th 101, 110-111.)

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**15** Penal Code section 1044 provides: "It shall be the duty of the judge to control all proceedings during the trial, and to limit the introduction of evidence and the argument of counsel to relevant and material matters, with a view to the expeditious and effective ascertainment of the truth regarding the matters involved."

Subdivision (a) of Evidence Code section 765 provides: "The court shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from undue harassment or embarrassment."

Evidence Code section 775 provides: "The court, on its own motion or on the motion of any party, may call witnesses and interrogate them the same as if they had been produced by a party to the action, and the parties may object to the questions asked and the evidence adduced the same as if such witnesses were called and examined by an adverse party. Such witnesses may be cross-examined by all parties to the action in such order as the court directs."

Accordingly, "'if a judge desires to be further informed on certain points mentioned in the testimony it is entirely proper for him to ask proper questions for the purpose of developing all the facts in regard to them. Considerable latitude is allowed the judge in this respect as long as a fair trial is indicated both to the accused and to the People. Courts are established to discover where lies the truth when issues are contested, and the final responsibility to see that justice is done rests with the judge.'" (*Carlucci*, *supra*, 23 Cal.3d at p. 255, quoting *People v. Lancellotti* (1957) 147 Cal.App.2d 723, 730.) In discharging this responsibility, however, "[t]he court may not . . . assume the role of either the prosecution or of the defense. [Citation.] The court's questioning must be '"temperate, nonargumentative, and scrupulously fair"'[citation], and it must not convey to the jury the court's opinion of the witness's credibility. [Citation.]" (*People v. Cook*, *supra*, 39 Cal.4th at p. 597, quoting *Hawkins*, *supra*, 10 Cal.4th at p. 948.)

An instructive application of these principles in found in *People v. Raviart* (2001) 93 Cal.App.4th 258. There, the defendant was convicted of two counts of robbery and several other crimes. (*Id*. at p. 262.) During the jury trial, the court was involved in the examination of approximately half of the 40 witnesses, almost all of whom testified for the prosecution. (*Id*. at p. 270.) On appeal, the defendant maintained that the court had taken on the prosecutor's role. (*Ibid*.) In rejecting this contention, the appellate court concluded that there was no judicial misconduct, as the trial court had intervened solely to clarify the witnesses' testimony and to develop the facts fully, had not belabored evidence adverse to the defendant or disparaged the defense, and had not created the impression that it was allied with the prosecution. (*Id*. at pp. 270-272.)

2. *Underlying Proceedings*

On October 23, 2009, during a pretrial hearing, the trial court expressed "dismay" to the prosecutor regarding the state of the record in the case and the then-operative information. Pointing to Evidence Code section 765, which authorizes courts to control the interrogation of witnesses, the trial court stated: "[I]t is extremely difficult for this court to follow what your theory is and where you think you're going. And I think it would be hopeless to present this to a jury in the state that it's in . . . ." The trial court suggested that the prosecutor amend the information to allege a single "refined" conspiracy involving appellants. Appellants did not object to the trial court's suggestion. On October 29, 2009, the prosecutor filed the first amended information operative during the trial.

At trial, the initial portion of the prosecution's case-in-chief consisted primarily of witnesses regarding the Tennessee Avenue transaction, including Coldewe, Arnold, and Sykes. The trial court limited the prosecutor's examination of several of the witnesses and sometimes summarized their testimony; in addition, the court asked questions of some of the witnesses. In the course of sidebar conferences, the court urged the prosecutor to expedite his questioning and to focus it on relevant testimony.

Shortly afterward, during a conference outside the jury's presence, Shelton's counsel stated that the trial court's examination of the witnesses was "beginning to give the impression that the court [was] the prosecutor." The court replied that it was attempting only to exercise reasonable control over the examinations, as authorized under Evidence Code section 765. The court explained: "[The prosecutor] has not . . . demonstrated effectively to the court that he has a way to cut this case down to the essence of the case . . . . My only interest is in the truth. If there is fraud here, I want the jury to know it. If there is not fraud, I want the jury to know that[,] too . . . ." The court added: "I will try not to ask questions, but

where I feel we're bogging down, I will jump in to try to move things along, but my sole purpose is to clarify issues for the truth." In addition, at the request of Little's counsel, the trial court agreed to regard all defense objections as joint.

During the remainder of the prosecution's case-in-chief, the trial court directed questions to most of the witnesses, including Agig, Najera,Woods, Blue, Dunn, Crawford, Menjivar, Thornton, McCrimmon, and Joshua. On several occasions, the court advised the prosecutor to elicit events in chronological order, remarked that the witness's testimony was confusing, or asked the prosecutor to "slow it down." In many of these instances, the court questioned the witnesses to establish the pertinent chronology or to clarify confusing testimony. In addition, the court sometimes summarized the witness's testimony, as elicited by the prosecutor, or asked the prosecutor to "move on." During conferences outside the jury's presence, the court told the prosecutor that the jury could not follow his confusing presentation of the case, and urged him to set events forth in chronological order.

3. *Analysis*

We conclude appellants have not shown that the trial court improperly stepped into the role of prosecutor. To the extent appellants maintain the trial court's pretrial suggestion that the prosecutor file an amended information was improper, they have forfeited their contention because they raised no objection to it. (*People v. Monterroso* (2004) 34 Cal.4th 743, 759; *Hawkins, supra*, 10 Cal.4th at p. 945.) Even if we were to consider the contention, we would reject it, as the trial court is required to "'call attention to omissions in the evidence or defects in the pleadings' which are likely to result in a decision other than on the merits." (*People v. St. Andrew* (1980) 101 Cal.App.3d 450, 457, quoting *Farrar v. Farrar* (1919) 41 Cal.App. 452, 457.)

To the extent appellants contend the court acted as the prosecutor during the trial, we see no misconduct.[16] We have carefully examined the court's examination of witnesses and remarks before the jury. In every instance, the court's questioning was impartial and tailored to clarify testimony or elicit relevant evidence; on no occasion did the court suggest any view regarding the witness's credibility. Whenever the court limited the prosecutor's examination of a witness, it did so because the witness could not provide additional relevant evidence; moreover, the court's summaries of testimony were nonargumentative and fair. Although the court criticized the prosecutor's presentation of the case outside the presence of the jury, its remarks before the jury were much more restrained. In the jury's presence, the court urged the prosecutor at different points to slow down or proceed in chronological order, sporadically adding that the prosecutor's questions were confusing the witness or the jury; at other points, the court asked the prosecutor to move on. Nowhere do we find the court's remarks exceeded its discretion "'to rebuke an attorney, sometimes harshly, when that attorney asks inappropriate questions.'" (*People v. Snow* (2003) 30 Cal.4th 43, 78, quoting *U.S.*

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**16** Respondent maintains that appellants forfeited their contention regarding the court's conduct during the trial by failing to object adequately at trial. Respondent argues that Little never joined in Shelton's objection to the court's conduct, which Shelton's counsel asserted after the prosecutor had presented his initial group of witnesses; furthermore, respondent argues that neither counsel objected to the court's subsequent conduct. We disagree.

Generally, to preserve contentions regarding judicial misconduct, a defendant must assert timely objections to the conduct (*People v. Monterroso*, *supra*, 34 Cal.4th at p. 759), unless objections would have been futile (*People v. Abbaszadeh* (2003) 106 Cal.App.4th 642, 648). Shelton's objection appears to be timely, as it occurred on the first day of trial, shortly after the court questioned the initial witnesses. Because Little's counsel asked to join in Shelton's objections, the request is properly viewed as encompassing this objection. Finally, the court's response to Shelton's objection rendered further objections futile.

*v. Donato* (D.C. Cir. 1996) 99 F.3d 426, 434.) Accordingly, the court did not stray into error by questioning witnesses or regulating the prosecutor's examination of witnesses.

*People v. Santana* (2000) 80 Cal.App.4th 1194, upon which appellants rely, is distinguishable. There, the trial court questioned prosecution and defense witnesses in an apparent effort to assist the prosecutor and impair the defense. (*Id*. at pp. 1207-1208.) The trial court elicited evidence adverse to the defendant from defense witnesses and belabored it; in addition, the court adopted the prosecutor's terminology in its questions, and limited defense counsel's cross-examination of witnesses. (*Id*. at pp. 1207-1208.) In view of this conduct, the appellate court concluded that the trial court had improperly aligned itself with the prosecution. (*Id*. at pp. 1208-1209.) No conduct of this type occurred here. As explained above, the trial court elicited evidence from the prosecution witnesses in an impartial manner, and restricted its remarks in open court to those warranted by the prosecutor's conduct. Moreover, appellants do not suggest that the trial court impaired defense counsels' cross-examination of witnesses or presentation of evidence, and our review of the record discloses no such conduct. In sum, there was no judicial misconduct.

C. *Admission of False Identifications*

Appellants contend the trial court erred in admitting false identification cards and driver's licenses they possessed when arrested. They argue that the identification cards and driver's licenses were inadmissible under Evidence Code sections 1101, subdivision (a), and 352. For the reasons discussed below, we reject these contentions.

"Evidence Code section 1101, subdivision (a)[,] generally prohibits the admission of a prior criminal act against a criminal defendant 'when offered to

prove his or her conduct on a specified occasion.' Subdivision (b) of the statute, however, provides that such evidence is admissible 'when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge . . . ).' . . . Moreover, to be admissible, such evidence '"'must not contravene other policies limiting admission, such as those contained in Evidence Code section 352.'"'" (*People v. Cole* (2004) 33 Cal.4th 1158, 1194.) Here, over appellants' objections, the trial court admitted the identification cards and driver's licenses, concluding that they showed "a willingness" to engage in identity theft, and "[went] to issues related to the case."

Appellants maintain that the identification cards and driver's licenses were inadmissible under Evidence Code section 1101, subdivision (b), arguing that none displayed the name of a person involved in the six real estate transactions underlying the charges against appellants. This contention fails in light of the offenses alleged against appellants, namely, conspiracy to commit grand theft exceeding $400, identity theft, filing false statements, forgery, and offering false or forged documents for filing, as well as multiple counts of these and related crimes.

To begin, the evidence was admissible to show the elements of conspiracy. As explained in *Cooks*, *supra*, 141 Cal.App.3d at pages 313 to 314, "[t]he settled law is . . . that in a prosecution for conspiracy, evidence of uncharged crimes may be admissible as proof of the common design or plan of the conspiracy. [Citations.] Or, as is also said, evidence of uncharged crimes may be admissible to prove that the charged (substantive) crimes were committed as part of a conspiracy to commit other crimes. [Citations.] In contrast to cases where evidence of uncharged crimes committed by the defendants is offered to prove, by inference, an element of the substantive (charged) crime, such as intent or identity (modus operandi) [citations], in a conspiracy case[,] uncharged crimes may be direct proof

of an essential element of the crime of conspiracy itself, namely, overt acts in furtherance of the conspiracy [citation.]" (Fn. omitted.)

In *Cooks*, the defendants were charged with several crimes, including conspiracy to commit murder. (*Cooks*, *supra*, 141 Cal.App.3d at pp. 242-243.) At trial, the prosecution was permitted to submit evidence that the defendants had attempted to kidnap three children, even though this crime was neither charged against the defendants nor expressly alleged as an overt act related to the conspiracy. (*Id*. at pp. 242-243, 251-257, 314-315.) The appellate court concluded that the evidence was properly admitted under Evidence Code section 1101, subdivision (b), to show an overt act in furtherance of the conspiracy. (*Cooks*, at p. 314.) We reach the same conclusion here, as the false identification cards and driver's licenses showed that appellants were prepared to engage in fraudulent transactions.

In addition, the evidence was admissible to show appellants' intent regarding the charges of identity theft, forgery, and other fraud-related crimes. In connection with such crimes, evidence that a defendant has participated in similar but uncharged conduct is admissible under Evidence Code section 1101, subdivision (b), to establish intent to defraud. (*People v. Pearson* (1957) 151 Cal.App.2d 583, 585 [evidence that defendant passed five uncharged forged checks admissible to show "common plan or design and criminal intent"]; see *People v. Lucas* (1924) 67 Cal.App. 452, 455 ["Upon a charge of forgery, and indeed upon all the charges of this kind, fraud is the essential element that must be laid at the door of the accused. Fraud, by its nature, is generally conceived in secret. To practice it of very necessity requires secrecy. . . . A long line of authorities sustains the introduction of evidence of like crimes, especially when associated with the crime charged, or at or about the same time, to prove intent."].)

Appellants also contend the evidence was inadmissible under Evidence Code section 352 as more prejudicial than probative. We disagree. "'The "prejudice" referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues.'" (*People v. Karis* (1988) 46 Cal.3d 612, 638, quoting *People v. Yu* (1983) 143 Cal.App.3d 358, 377.) As explained above, the evidence of the false identification cards and driver's licenses was probative of the existence of a conspiracy to engage in fraudulent real estate transactions, as well as appellants' intent in committing the underlying fraud-related crimes. Accordingly, the trial court did not err in admitting the evidence under Evidence Code section 352.

D. *Section 654*

Appellants contend the trial court contravened section 654 in imposing their sentences. As explained below, we disagree.

1. *Governing Principles*

Subdivision (a) of section 654 prohibits multiple punishments for "[a]n act or omission that is punishable in different ways by different provisions of law." Generally, when several counts are properly subject to section 654, a court must identify the count carrying the longest sentence, including enhancements, and stay the sentence imposed under the other pertinent counts. (*People v. Kramer* (2002) 29 Cal.4th 720, 722.)

Under section 654, "a course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment." (*People v. Beamon* (1973) 8 Cal.3d 625, 639, fn. 11.) As explained in *People v. Gaio* (2000) 81 Cal.App.4th 919, 935, "[t]his is particularly so where the offenses are

temporally separated in such a way as to afford the defendant opportunity to reflect and to renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken. [Citation.]" The trial court's findings regarding the defendant's ""separate intents"" during a course of conduct are reviewed for the existence of substantial evidence. (*People v. Andra* (2007) 156 Cal.App.4th 638, 640-641.)

2. *Underlying Proceedings*

In sentencing appellants, the trial court made several determinations regarding the application of section 654. The court concluded that the statutory language of section 115 mandates consecutive sentencing for multiple violations of attempting to file a false or forged instrument, notwithstanding section 654.[17] Furthermore, the court determined that each defendant was properly subject to multiple punishments for some of the crimes charged against him, as the crimes were elements of distinct real estate transactions that unfolded over a period of time. The court found that the fraudulent transactions involved separate objectives because they concerned different properties and victims, and that "crimes committed on different occasions permitted [appellants] to reflect on their criminal activities." Accordingly, with respect to each transaction, the trial court concluded

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**17** For similar reasons, the court also ruled that the pertinent enhancements under sections 186.11, subdivision (a)(1), and former section 12022.6, subdivision (a)(2), must be imposed consecutively. Subdivisions (a)(1) and (a)(2) of section 186.11 provide that when a defendant engages in a pattern of felony conduct involving two or more fraud-related felonies and the taking of more than $500,000, the trial court "shall" impose additional consecutive punishment of two, three, or five years. Former subdivision (a)(2) of section 12022.6 provided that when a defendant intentionally creates losses or damages exceeding $150,000 through a felony, the trial court "shall impose an additional term of two years."

that section 654 permitted separate punishments for forgeries committed on different dates.

In sentencing Shelton to a total term of imprisonment of 29 years and 4 months, the trial court selected grand theft regarding the Tennessee Avenue property (count 6) as the principal count, imposed the upper term of three years, and added a consecutive two-year enhancement under former section 12022.6, subdivision (a)(2). Regarding the remaining counts related to the Tennessee Avenue property, the court imposed consecutive punishment (one-third of the middle term) on some counts, and imposed and stayed the punishment for the remaining counts under section 654. Similarly, in connection with each of the remaining five real estate transactions, the court imposed consecutive punishment (one-third of the middle term) on some counts, and imposed and stayed the punishment for the other counts related to the transaction. In addition, the trial court imposed and stayed punishment for conspiracy (count 74) under section 654, and added a five-year consecutive enhancement to Shelton's term of imprisonment under section 186.11, subdivision (a)(2).

The trial court sentenced Little in an analogous manner. In imposing a total term of imprisonment of 27 years and 4 months, the trial court again selected grand theft regarding the Tennessee Avenue property (count 6) as the principal count, imposed the upper term of three years, and added two consecutive two-year enhancements under sections 12022.1, subdivision (b), and former 12022.6, subdivision (a)(2).[18] As with Shelton, in connection with the Tennessee Avenue transaction and the four other pertinent transactions, the court imposed consecutive

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**18** Section 12022.1, subdivision (b), permits the imposition of a two-year enhancement when a defendant is arrested for a second offense committed while the defendant has been released from custody on a primary offense.

punishment (one-third of the middle term) on some counts, and imposed and stayed the punishment for the remaining counts under section 654. The trial court also imposed and stayed punishment for conspiracy (count 74), and added a five-year consecutive enhancement to Little's term of imprisonment (§ 186.11, subd. (a)(2)).

3. *Analysis*

Appellants contend that section 654 permitted the imposition of punishment on only one count related to each property, arguing that the criminal acts associated with each property were incidental to "one objective, obtaining money from that particular property."[19] We see no errors in the trial court's determinations regarding the application of section 654.

To begin, the trial court correctly concluded that the statutory language of section 115, subdivision (a), mandates separate punishments for each offering of a false or forged instrument for filing, notwithstanding section 654. Subdivision (b) of section 115 provides that every such act "constitute[s] a separate violation." As explained in *People v. Gangemi* (1993) 13 Cal.App.4th 1790, 1800, "[t]his language demonstrates an express legislative intent to exclude section 115 from the penalty limitations of section 654."

The trial court also properly ruled that for each real estate transaction, forgeries committed on different dates or occasions were subject to separate punishments. In a variety of circumstances, the courts have held that multiple punishments are proper for distinct acts of forgery or fraud, even though they may

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**19** Appellants do not dispute the trial court's imposition of consecutive enhancements under section 186.11, subdivision (a)(1), section 12022.1, subdivision (b), and former section 12022.6, subdivision (a)(2).

be linked to a general objective. In *People v. Neder* (1971) 16 Cal.App.3d 846, 853, the defendants stole a credit card and forged the cardholder's signature on three purchase receipts for different items from the same store. In affirming the imposition of separate punishments on three counts of forgery, the appellate court noted that the three acts of forgery were arguably linked to the "fundamental objective" of taking goods from the store, but held that the defendants' course of conduct was divisible, as each act of forgery was directed at obtaining a different item.

Similarly, in *People v. Frederick* (2006) 142 Cal.App.4th 400, 404-405, the defendants operated a fraudulent "endless chain" scheme under which the victims were promised homes and vehicles in return for their contributions to the scheme. (*Id*. at pp. 404-405.) In imposing multiple punishments on one defendant for 12 counts of grand theft, the trial court found that the counts were divisible in time, for purposes of section 654. (*Id*. at p. 421.) The appellate court concluded there was substantial evidence to support the finding, as the crimes were committed at different times and locations and involved different victims. (*Id*. at p. 421; see also *People v. Lochmiller* (1986) 187 Cal.App.3d 151, 153-154 [multiple punishments properly imposed on 10 counts of selling unregistered investments in single company because sales were made to different victims at different times].)

Here, there is sufficient evidence that each real estate transaction constituted a course of conduct divisible in time, even though the crimes within each transaction generally involved the same victim or victims. The evidence at trial showed that each transaction required the defendants to engage in a complex pattern of criminal activity over an extended period to arrange the fraudulent sale. At each stage of a transaction, distinct acts of criminal conduct were committed. Because this gave appellants ample opportunity to reconsider their misconduct and

abandon it, the trial court properly found that "crimes committed on different occasions permitted [appellants] to reflect on their criminal activities."

Appellants' reliance on *People v. Curtin* (1994) 22 Cal.App.4th 528 (*Curtin*) and *People v. Kenefick* (2009) 170 Cal.App.4th 114 (*Kenefick*) is misplaced. In *Curtin*, the defendant obtained a blank check from a bank depositor, forged the depositor's name on it, and attempted to cash it at the bank. (*Curtin, supra*, 22 Cal.App.4th at p. 530.) After the defendant was convicted of burglary and forgery, the trial court declined to stay the punishment for burglary under section 654. (*Curtin, supra,* at p. 530.) The appellate court concluded this was error, reasoning that the evidence unequivocally showed the two crimes formed an indivisible course of conduct aimed at a single criminal objective. (*Id*. at p. 532.) No such error occurred here, as there was substantial evidence to support the trial court's findings regarding the divisibility of the real estate transactions.

*Kenefick* is distinguishable for similar reasons. There, on two separate occasions, the defendant forged signatures on a promissory note in order to persuade the victim to provide funds to the defendant. (*Kenefick, supra,* 170 Cal.App.4th at pp. 117-118.) After the defendant was convicted of several crimes in connection with these transactions, including burglary, and grand theft, the defendant argued on appeal -- apparently, for the first time -- that section 654 barred separate punishments for two counts of forgery based on the promissory notes. (*Kenefick, supra,* at pp. 124-125.) The appellate court agreed, concluding that the forgeries were "'merely preliminary steps'" in the defendant's plan to achieve her goal, namely, the taking of money from the victim. (*Id*. at p. 125, quoting *People v. Kronemyer* (1987) 189 Cal.App.3d 314, 368.) Here, unlike *Kenefick*, the trial court made express findings regarding the divisibility of the transactions, and as explained above, there is substantial evidence to support the

findings. In sum, the trial court did not contravene section 654 in determining appellants' sentences.

E. *Shelton's Abstract of Judgment*

Shelton contends the abstract of judgment regarding his convictions incorrectly states that two eight-month terms were imposed on count 20 (attempting to file a false or forged instrument; § 115, subd. (a)) and that the eight-month term imposed on count 38 (forgery; § 470, subd. (a)) was stayed. We agree. As respondent notes, the transcript of the sentencing hearing establishes that the trial court imposed only one eight-month term on count 20 and did not stay the eight-month term imposed on count 38. The abstract of judgment must therefore be modified to correct these errors.

## DISPOSITION

The judgments are affirmed. The trial court is directed to prepare an amended abstract of judgment for Shelton reflecting that a single eight-month term was imposed on count 20 and that the eight-month term imposed on count 38 was not stayed (see pt. E., *ante*). The court shall forward a copy of the amended abstract of judgment to the California Department of Corrections and Rehabilitation.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.